

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ERICK JASON TALBOT,  
Petitioner,

v.

CA DEPT. OF CORRECTIONS AND  
REHABILITATIONS,  
Respondent.

Case No. 16-00205 HRL (PR)

**ORDER OF DISMISSAL; GRANTING  
MOTION FOR LEAVE TO PROCEED  
IN FORMA PAUPERIS**

(Docket No. 3)

Petitioner, a state prisoner at San Quentin State Prison proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction. Petitioner has filed a motion for leave to proceed in forma pauperis. (Docket No. 3.)

**BACKGROUND**

According to the petition, Petitioner pleaded guilty to violating Penal Code §§ 459, 530.5(a), and 496(a) in Marin County Superior Court. (Pet. at 1.) Petitioner was sentenced on November 5, 2015, to 5 years and 8 months. (Id.) The petition indicates that Petitioner did not appeal his conviction, or file any other collateral review of the matter. (Id. at 2-3.)

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Petitioner filed the instant federal habeas petition on December 3, 2015.<sup>1</sup> (Pet. at 6.)

### DISCUSSION

Prisoners in state custody who wish to challenge collaterally in federal habeas proceedings either the fact or length of their confinement are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. See 28 U.S.C. § 2254(b)-(c). The exhaustion requirement is satisfied only if the federal claim (1) has been “fairly presented” to the state courts, Picard v. Connor, 404 U.S. 270, 275 (1971) (citations omitted); and (2) no state remedy remains available, see Johnson v. Zenon, 88 F.3d 828, 829 (9th Cir. 1996). Before a petitioner may challenge either the fact or length of his confinement in a habeas petition in this Court, he must present to the California Supreme Court any claims he wishes to raise in this court. See Rose v. Lundy, 455 U.S. 509, 522 (1982) (holding every claim raised in federal habeas petition must be exhausted). If available state remedies have not been exhausted as to all claims, the district court must dismiss the petition. See id., 455 U.S. at 510; Guizar v. Estelle, 843 F.2d 371, 372 (9th Cir. 1988).

The petition contains seven claims, (Pet. at 5, and Attach.), and it is apparent from the petition that Petitioner did not present any of them to the state high court. (Id. at 2-3, 5.) Accordingly, this petition must be DISMISSED for failure to exhaust all claims.

### CONCLUSION

The instant petition is DISMISSED for failure to exhaust state court remedies. See Rose, 455 U.S. at 510. This dismissal is without prejudice to Petitioner’s returning to federal court after exhausting his state court remedies.

Petitioner’s motion for leave to proceed in forma pauperis, (Docket No. 3), is GRANTED.

This order terminates Docket No. 3.

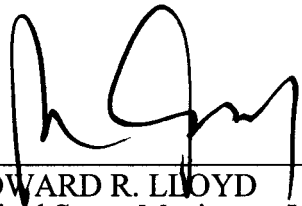
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<sup>1</sup> Although Petitioner dated his signature “12/3/16,” the Court assumes he intended to indicate the year as 2015.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

6/1/16

  
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HOWARD R. LLOYD  
United States Magistrate Judge

United States District Court  
Northern District of California

Order of Dismissal; Granting IFP  
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